

# ARKANSAS SUPREME COURT

No. CR 09-40

CARLTON DUKE HAYES  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered      April 16, 2009

PRO SE MOTION TO FILE  
ENLARGED BRIEF [CIRCUIT COURT  
OF PULASKI COUNTY, CR 2007-789,  
HON. JOHN W. LANGSTON, JUDGE]

APPEAL DISMISSED; MOTION  
MOOT.

## PER CURIAM

In 2007, appellant Carlton Duke Hayes was found guilty by a jury of first-degree murder. He was sentenced as a habitual offender with an enhancement for use of a firearm, and an aggregate term of 420 months' imprisonment was imposed. The Arkansas Court of Appeals affirmed. *Hayes v. State*, CACR 07-1184 (Ark. App. Jun. 4, 2008).

Subsequently, petitioner filed in the trial court a pro se petition for postconviction relief pursuant to Arkansas Rule of Criminal Procedure 37.1. The trial court dismissed the petition as being untimely. Appellant has lodged a pro se appeal here from the order of dismissal.

Now before us is appellant's pro se motion to file an enlarged brief-in-chief. Appellant also tendered the brief with the motion. As appellant could not be successful on appeal, the appeal is dismissed and the motion is moot. An appeal from an order that denied a petition for a postconviction remedy will not be permitted to go forward where it is clear that the appellant could not prevail. *Johnson v. State*, 362 Ark. 453, 208 S.W.3d 783 (2005) (per curiam).

It is clear from the record lodged in this appeal that appellant's Rule 37.1 petition was not timely filed.<sup>1</sup> Pursuant to Arkansas Rule of Criminal Procedure 37.2(c), if an appeal was taken, a petition under Rule 37.1 must be filed in the trial court within sixty days of the date the mandate was issued by the appellate court. Here, the mandate was issued by the Court of Appeals on June 24, 2008, and appellant's Rule 37.1 petition was filed on September 22, 2008,<sup>2</sup> which was more than sixty days after the mandate was issued. Time limitations imposed in Rule 37.2(c) are jurisdictional in nature, and if they are not met, a trial court lacks jurisdiction to consider a Rule 37.1 petition. *Maxwell v. State*, 298 Ark. 329, 767 S.W.2d 303 (1989).

Appeal dismissed; motion moot.

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<sup>1</sup>The Rule 37.1 petition was also not verified as required by Arkansas Rule of Criminal Procedure 37.1(c).

<sup>2</sup>The trial court based its order of dismissal on a Rule 37.1 petition that was file-marked on September 24, 2008. However, the record lodged in this appeal contains the same Rule 37.1 petition with a file-mark date of September 22, 2008. In either instance, the petition was untimely filed.